

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

ALLEN DIBBLE, KATHY DIBBLE, and
LEA COUNTY TREASURER;
Defendants.

CIVIL NO: 1:19-cv-00242

UNITED STATES' COMPLAINT

The United States of America, pursuant to 26 U.S.C. §§ 7401 and 7403, at the direction of a delegate of the Attorney General of the United States, and with the authorization and sanction of a delegate of the Secretary of the Treasury, brings this civil action against Defendants, Allen Dibble and Kathy Dibble (collectively, “the Dibbles”) to (1) reduce to judgment delinquent federal individual income tax assessments for the tax years 2006-2012, 2015, and 2016; and (2) enforce federal tax liens for the foregoing delinquent taxes on property located in Lea County, New Mexico owned by the Dibbles.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 26 U.S.C. §§ 7402(a) and 7403(c), and 28 U.S.C. §§ 1331, 1340, and 1345 because this action arises under federal tax law, and the United States is the Plaintiff.

2. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1396 because the Dibbles reside in Lea County, New Mexico, and the property subject to this action is also located in Lea County, New Mexico.

PARTIES

3. Plaintiff is the United States of America.

4. Defendant, Allen Dibble, a taxpayer in this lawsuit, resides at 518 North Hinson Road, Lovington, New Mexico, 88260, which is within the jurisdiction of this Court.

5. Defendant, Kathy Dibble, a taxpayer in this lawsuit, resides at 518 North Hinson Road, Lovington, New Mexico, 88260, which is within the jurisdiction of this Court.

6. Defendant, Lea County Treasurer is named as a Defendant because she may claim an ad valorem tax lien interest in the property upon which the United States seeks to enforce its liens. Defendant, Lea County Treasurer may be served 100 North Main Avenue, Suite C3, Lovington, New Mexico 88260.

THE SUBJECT PROPERTY

7. The title of the real property upon which the United States seeks to enforce its federal tax liens is owned in the name of the Dibbles and consists of the land, along with all improvements, buildings, and appurtenances thereon, now known as and numbered 518 North Hinson Road, Lovington, New Mexico, 88260 (the “Real Property”). The legal description of the Real Property is as follows:

Lot Thirteen (13), Section 1, Township 16 South, Range 36 East, N.M.P.M., Lea County, New Mexico.
Subject to reservations, restrictions and easements appearing of record with warranty covenants.

8. The Dibbles acquired the Real Property via a Warranty Deed filed with the State of New Mexico, County of Lea on January 18, 2006.

COUNT I **Judgment against the Dibbles for Income Tax Liabilities**

9. On the following dates, a delegate of the Secretary of the Treasury made assessments against Allen Dibble for federal income taxes and penalties for the tax year 2006

(“Allen’s 2006 Income Tax Liabilities”) in the following amounts, which has a balance due with accruals and costs as of March 15, 2019, totaling \$30,759.69, as follows:

Tax Period Ending	Assessment Dates	Assessment Type	Amount Assessed	Balance Due as of March 15, 2019
12/31/2006	06/08/2009	Tax	\$17,065	
		Late Filing Penalty	\$ 3,839.62	
		Failure to Pay Tax Penalty	\$ 2,218.45	
	12/27/2010	Failure to Pay Tax Penalty	\$ 2,047.79	
TOTAL:				\$30,759.69

10. On the following dates, a delegate of the Secretary of the Treasury made assessments against the Dibbles for federal income taxes and penalties for the tax years 2007-2012, 2015, and 2016 (“the Joint Income Tax Liabilities”) in the following amounts, which have balance due with accruals and costs as of March 15, 2019, totaling \$138,542.28, as follows:

Tax Period Ending	Assessment Dates	Assessment Type	Amount Assessed	Balance Due as of March 15, 2019
12/31/2007	10/07/2013	Tax	\$9,128	\$20,084.78
		Estimated Tax Penalty	\$ 412	
		Late Filing Penalty	\$2,038.27	
		Failure to Pay Tax Penalty	\$2,264.75	
12/31/2008	10/14/2013	Tax	\$13,095	\$25,013.75
		Estimated Tax Penalty	\$ 382	
		Late Filing Penalty	\$2,676.37	
		Failure to Pay Tax Penalty	\$2,973.75	
12/31/2009	10/14/2013	Tax	\$9,100	\$16,741.42
		Estimated Tax Penalty	\$ 199	
		Late Filing Penalty	\$1,867.50	
		Failure to Pay Tax Penalty	\$1,743	
	12/23/2013	Failure to Pay Tax Penalty	\$ 207.50	
	12/22/2014	Failure to Pay Tax Penalty	\$ 124.50	

12/31/2010	09/30/2013	Tax	\$9,443	\$15,538.57
		Late Filing Penalty	\$1,944.67	
		Failure to Pay Tax Penalty	\$1,296.45	
	12/23/2013	Failure to Pay Tax Penalty	\$ 216.07	
	12/22/2014	Failure to Pay Tax Penalty	\$ 648.22	
12/31/2011	09/30/2013	Tax	\$11,520	\$21,805.36
		Estimated Tax Penalty	\$ 208	
		Late Filing Penalty	\$2,592	
		Failure to Pay Tax Penalty	\$1,036.80	
	12/23/2013	Failure to Pay Tax Penalty	\$ 288	
	12/22/2014	Failure to Pay Tax Penalty	\$1,382.40	
	12/28/2015	Failure to Pay Tax Penalty	\$ 172.80	
12/31/2012	09/30/2013	Tax	\$7,973	\$12,450.54
		Estimated Tax Penalty	\$ 143	
		Failure to Pay Tax Penalty	\$ 239.19	
	12/23/2013	Failure to Pay Tax Penalty	\$ 199.32	
	12/22/2014	Failure to Pay Tax Penalty	\$ 956.76	
	12/28/2015	Failure to Pay Tax Penalty	\$ 597.97	
12/31/2015	11/21/2016	Tax	\$11,191	\$13,015.08
		Estimated Tax Penalty	\$ 202	
		Failure to Pay Tax Penalty	\$ 447.64	
12/31/2016	06/05/2017	Tax	\$10,314	\$13,892.78
		Estimated Tax Penalty	\$ 247	
		Failure to Pay Tax Penalty	\$ 103.14	
TOTAL:				\$138,542.28

11. A delegate of the Secretary of the Treasury gave notice and demand for payment of Allen's 2006 Income Tax Liabilities and the Joint Income Tax Liabilities described above to the Dibbles. After the application of statutory interest, penalties, other additions, fees,

abatements, payments, and credits, these liabilities had an unpaid balance of \$169,301.97, due as of March 15, 2019.

12. Despite notice and demand for payment, the Dibbles failed, neglected, or refused to fully pay Allen's 2006 Income Tax Liabilities and the Joint Income Tax Liabilities described above.

13. Pursuant to 26 U.S.C. § 7402, the United States is entitled to a judgment that Allen Dibble is liable to the United States for tax liabilities and penalties for the tax year 2006 in the amount of \$30,759.69, as of March 15, 2019, plus prejudgment and post judgment interest thereon at the rates set forth in 26 U.S.C. § 6601, 6621 and 28 U.S.C. § 1961(c), until paid.

14. Pursuant to 26 U.S.C. § 7402, the United States is entitled to a judgment that the Dibbles are jointly and severally liable to the United States for the Joint Income Tax Liabilities in the amount of \$138,542.28, as of March 15, 2019, plus prejudgment and post judgment interest thereon at the rates set forth in 26 U.S.C. § 6601, 6621 and 28 U.S.C. § 1961(c), until paid.

COUNT 2

Enforcement of Federal Tax Liens

15. Pursuant to 26 U.S.C. §§ 6321 and 6322, as a result of the neglect, refusal or failure by the Dibbles to pay the tax liabilities described above after notice and demand, federal tax liens arose on the dates of the assessments, and attached to all property and rights to the property belonging to the Dibbles, including, the Real Property.

16. Additionally, the IRS filed Notices of Federal Tax Lien ("NFTL") against the Dibbles in accordance with 26 U.S.C. § 6323(f) with the County Clerk in Lea County, New Mexico with regard to the tax liabilities described above on the following dates:

Taxpayer	Type of Tax	Tax Periods Ending	Date NFTL Filed
Allen Dibble	Income	12/31/2006	6/18/2018
The Dibbles	Income	12/31/2007-12/31/2012; 12/31/2015	1/23/2017
The Dibbles	Income	12/31/2016	12/05/2017

17. Pursuant to 26 U.S.C. § 7403, the United States is entitled to enforce the federal tax liens described in above against the Real Property and have the entire Real Property sold in a judicial sale, or by a receiver appointed for that purpose, free and clear of all the rights, titles, claims, liens, and interests of the parties, including, any rights of redemption, with the proceeds of the sale distributed: first, to pay the costs and expenses of the sale, including any costs and expenses incurred to secure and maintain the Real Property; second, to Defendant, Lea County Treasurer to pay any real estate taxes due and owing which are entitled to priority under 26 U.S.C. § 6323(b)(6); third, to the United States to pay the tax liabilities described above; and fourth, to the other parties in accordance with the law, or as otherwise determined by the Court in accordance with the law.

PRAYER

WHEREFORE, the United States of America prays for a judgment determining:

A. That Allen Dibble is liable to the United States for tax liabilities and penalties for tax year 2006 in the amount of \$30,759.69, as of March 15, 2019, plus prejudgment and post judgment interest thereon at the rates set forth in 26 U.S.C. § 6601, 6621 and 28 U.S.C. § 1961(c), until paid;

B. That the Dibbles are liable to the United States for the Joint Income Tax Liabilities in the amount of \$138,542.28, as of March 15, 2019, plus prejudgment and post judgment interest thereon at the rates set forth in 26 U.S.C. § 6601, 6621 and 28 U.S.C. § 1961(c), until paid;

C. That the federal tax liens securing the liabilities described in this Complaint shall be enforced against the Real Property by ordering the sale of the entire Real Property in a judicial sale, or by a receiver appointed for that purpose, free and clear of all rights, titles, claims, liens, and interests of the parties, including any rights of redemption, with the proceeds of the sale distributed: first, to pay the costs and expenses of the sale, including, any costs and expenses incurred to secure and maintain the Real Property; second, to Defendant, Lea County Treasurer to pay any real estate taxes due and owing which are entitled to priority under 26 U.S.C. § 6323(b)(6); third, to the United States to pay the tax liabilities described above; and fourth, to the other parties in accordance with the law, or as otherwise determined by the Court in accordance with the law; and

D. That awards the United States such other and further relief as this Court deems just and proper, including, its costs incurred in this action and for any surcharge authorized by 28 U.S.C. § 3011.

Respectfully submitted,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

By: /s/ Holly M. Church

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ATTORNEYS FOR THE UNITED STATES

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____